

STATE OF MICHIGAN
COURT OF APPEALS

MICHAEL BOYADJIEV, f/k/a MICHAEL
BOYADJIEW,

Plaintiff-Appellant,

v

TRANSNATION TITLE INSURANCE
COMPANY,

Defendant-Appellee.

UNPUBLISHED
December 29, 2005

No. 257618
Washtenaw Circuit Court
LC No. 04-000074-CK

Before: Fitzgerald, PJ. and O'Connell and Kelly, JJ.

PER CURIAM.

In this breach of an insurance contract claim plaintiff appeals as of right the trial court's order granting summary disposition in defendant's favor. We affirm.

In 1997, plaintiff purchased a home. He also purchased a title insurance policy on the property from defendant. In 2003, plaintiff divided the property into two parcels intending to sell them separately. This prompted plaintiff's neighbor Gloria Grundy to file a complaint to quiet title alleging adverse possession and abandonment. Pursuant to the title insurance contract, plaintiff requested that defendant defend and indemnify him against the Grundy case. Defendant declined, citing the policy exception indicating defendant would not insure against loss or damage arising by reason of "[r]ights or claims of parties in possession not shown of record." Defendant argued that it had no contractual duty to defend or indemnify plaintiff against the Grundy case. The trial court agreed and granted summary disposition for defendant.

Plaintiff argues the trial court erred in granting summary disposition to defendant. This Court reviews de novo a trial court's decision granting summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). Issues concerning the proper interpretation of contracts present questions of law that are subject to de novo review. *Archambo v Lawyers Title Ins Corp*, 466 Mich 402, 408; 646 NW2d 170 (2002).

The main goal of interpreting a contract is to honor the intent of the parties. *Mahnick v Bell Co*, 256 Mich App 154, 159; 662 NW2d 830 (2003). Courts must discern the parties' intent from the words used in the contract and must enforce an unambiguous contract according to its plain terms. *Id.*; *Wilkie v Auto-Owners Ins Co*, 469 Mich 41, 51-52; 664 NW2d 776 (2003). "If the contract language is clear and unambiguous, then its meaning is a question of law for the

court to decide.” *Conagra, Inc v Farmers State Bank*, 237 Mich App 109, 132; 602 NW2d 390 (1999).

Plaintiff’s title insurance policy provided title insurance subject to the exceptions in Schedule B, which stated, in relevant part:

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys’ fees or expenses) which arise by reason of:

1. Rights or claims of parties in possession not shown of record.

Plaintiff argues that defendant was contractually required to defend him in the Grundy case because this language excepts claims of parties actually in possession, not claims of parties merely claiming to be in possession. In other words, plaintiff contends, only if Grundy was actually in possession of the land would defendant be excepted from insuring plaintiff against her claims. On the other hand, if Grundy was merely claiming to be in possession, defendant was required to insure plaintiff against her claims. Plaintiff suggests that the issue of whether Grundy was in possession of the property, and thus the issue of defendant’s liability, should have been determined on the basis photographs of the property that plaintiff submitted to defendant. We disagree.

Neither basic contract law nor the plain language of the title insurance contract permit this conclusion. First, regardless of whether the exclusion applies to claims of parties actually in possession or claims of parties merely claiming to be in possession, the exclusion applies to any possession that is not of record. Thus, whether Grundy was actually in possession or merely claimed to be in possession, her interest in the property was not recorded. Therefore, the contract language clearly excepts coverage.

Furthermore, whether a party is in possession of land is a legal conclusion. Thus, under plaintiff’s suggested interpretation, the question of whether defendant was required to insure plaintiff against the Grundy’s case could not be decided until a legal determination was made on whether Grundy was in possession of plaintiff’s land. This would lead to the absurd result that defendant’s liability to indemnify or defendant plaintiff against Grundy’s claims could not be determined until after the case was resolved. To conclude, as plaintiff suggests, that a party bringing a claim of possession must actually be in possession for defendant’s liability to be excepted would be adding a requirement that is not included in the contract’s plain language.

We conclude that Grundy’s claims for adverse possession or abandonment are claims of a party in possession that is not shown in the public records. Pursuant to the title insurance policy, defendant had no duty to defend or indemnify plaintiff against the Grundy case. Therefore, the trial court did not err in granting summary disposition in defendant’s favor.¹

¹ We decline to address plaintiff’s unpreserved issue of whether the trial court should have awarded sanctions against defendant for citing what plaintiff contends was abrogated case law.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Peter D. O'Connell

/s/ Kirsten Frank Kelly